IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.897 OF 2005
IN
NOTICE OF MOTION NO. OF 2005
IN
SUIT NO.3627 OF 2005

Shri T. Balaram Pai — Appellant
vs.
Smt.Pournima Prabhakar Kamath
& ors. — Respondents

Mr.S.R.Nargolkar for the appellant.

Mr.P.S. Dani with Mrs.Aarati Bhide for the respondents 1 to 3.

CORAM : B.H. MARLAPALLE,J.

DATED : 29th September 2005

P.C.

Heard Mr.Nargolkar, the learned counsel for the appellant-plaintiff.

2. This appeal arises from the order dated 15.9.2005 passed in draft notice of motion in S.C.Suit No.3627/2005. By the said order, the learned Judge of the City Civil Court was pleased to refuse an ad-interim relief and the notice of motion has been made returnable on 21.10.2005.

3. The plaintiff claims that he is in possession of the hotel business by name "Srikrishna Hindu Hotel" located in La-Repose Building, opp. KEM Hospital, Parel, Mumbai

along with room nos. 8 to 11 and 13 on a conducting basis. He further claims that he was forcibly dispossessed from room nos. 8 to 11 and 13 on 3.9.2005 and, therefore, he prayed for an ad-interim injunction restraining the defendants from dispossessing him from the hotel premises without following the due process of law. The defendants, at the ad-interim stage, claimed that the plaintiff along with his brother was in the employment of the defendants and was occupying some rooms located above the hotel premises. Both of them wee removed from service on 30.7.2005 and, therefore, they could not be termed as tenants or agents to retain possession over the hotel premises. Number of documents were filed on record by the plaintiff, but none of them prima facie show that he was either an agent or a partner along with the defendants to run the hotel. On the other hand, these documents prima facie show that he was conducting the hotel as a Manager which term implies an employee. The plaintiffs claim that he was the conductor of the hotel on payment of fixed monthly consideration to the defendants is an issue which will have to be decided on adducing evidence in the absence of any document like Agreement of the Contract/Memorandum of Understanding between the parties for deciding a prima facie case. The defendants will have to file their reply to the notice of motion in support of their contention that the plaintiff was in

fact an employee and not an agent or a partner. Hence, there is no reason to interfere in the view taken by the trial Court while rejecting the ad-interim relief.

4. The appeal is, therefore, dismissed in limine and it is directed that the defendants would file their reply to the notice of motion on or before the next date i.e. 21.10.2005 before the trial Court and the said notice of motion be heard and decided on its own merits preferably by 31.12.2005.

5. Civil Application does not survive.

(B.H.MARLAPALLE,J.)